

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

PLM1

FILE: B-192765

DATE: May 9, 1979

MATTER OF: *personal name* Helen Mansfield - *Request for* Retroactive Temporary Promotion *and Backpay*

10,108

DIGEST:

1. Employee claims backpay for period from January 20, 1975, to June 6, 1976, for performing duties of higher graded position. Record discloses that higher graded position was abolished on May 10, 1974, and position filled by employee was not classified at higher grade until March 12, 1976. Claim may not be paid since employee occupied higher grade position from March 12, 1976, to June 6, 1976, and that period was less than required 120-day period needed for retroactive temporary promotion under Turner-Caldwell, 55 Comp. Gen. 539 (1975).
2. Employee claims backpay for period of July 1, 1976 to December 6, 1976, for performing duties of higher graded position. Record discloses that employee filled newly created position which was not classified until November 15, 1976. Claim may not be paid since employee did not occupy higher grade classified position until November 15, 1976, and the period from then to December 6, 1976, was less than required 120-day period needed for retroactive temporary promotion under Turner-Caldwell, 55 Comp. Gen. 539 (1975).
3. Matters relating to allegations of improper position classification are for employing agency and Office of Personnel Management, not GAO, and GAO has no authority to award backpay to employee for period of erroneous classification of his position.

Ms. Helen Mansfield, an employee of the Department of Health Education and Welfare (HEW), appeals the denial of her

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claim for a retroactive temporary promotion and backpay. The claim was denied by our Claims Division in Settlement Certificate No. Z-2801136, July 25, 1978.

Ms. Mansfield, who was a permanent GS-14, alleges that from January 20, 1975, until June 6, 1976, she was detailed to a GS-15 position as Acting Chief, Division of Social Services Research and Demonstration, Office of Research and Demonstrations, and that from July 1, 1976, until December 4, 1976 she was detailed to a GS-15 position as Social Research Utilization Officer. Since Ms. Mansfield's claim involves two separate and distinct personnel actions, her claim is actually two claims each of which must be decided independent of the other. See Matter of James F. Ford, 57 Comp. Gen. 605 (1978). However, the resolution of both claims involves applying the same general rules set down in a line of cases commencing with Matter of Everett Turner-David L. Caldwell, 55 Comp. Gen. 539 (1975).

In the Turner-Caldwell, case, we held that employees detailed to higher grade positions for more than 120 days, without Civil Service Commission approval, are entitled to retroactive temporary promotions with backpay from the 121st day of the details until they are terminated. In affirming the Turner-Caldwell case at 56 Comp. Gen. 427 (1977), we pointed out that the employee must satisfy the requirements for a retroactive promotion. In this connection we have held that to qualify for backpay under the Turner-Caldwell rationale, the detail must be to an established higher grade position and not a detail involving the performance of a higher grade position not yet officially classified. Matter of Sherman W. Blosser, B-189492, February 14, 1978; Matter of Hubert J. Buteau, B-187287, May 13, 1977.

Ms. Mansfield's claim under the Acting Chief position was initially denied by the agency because the position to which she was detailed had been officially abolished on May 10, 1974, due to an agency reorganization. The claimant disputes that the reorganization abolished the position and contends that the reorganization only changed the name of her assigned section but not the staffing pattern and assigned duties. Thus, she claims that her detail to the Acting Chief position was a detail to an existing position classified as GS-15.

In support of her contention, the claimant has submitted various documents and exhibits to which she specifically calls

our attention to her "Exhibits 1 and 13." Her "Exhibit 1" is an internal HEW memorandum of March 4, 1974, indicating a proposed reorganization and containing attachments which set forth the preliminary organization chart as well as personnel for existing units and proposed personnel for the reorganized units. "Exhibit 13" is an internal HEW form, dated April 15, 1974, which specifies the details for the printing and distribution of a research report and which was signed by the chief, Social Services R & D Branch. Generally, Ms. Mansfield is seeking to have these exhibits evidence the continuity of the position to which she was detailed as a GS-15 position because the exhibits refer to her and her predecessor in the chief's position.

As these exhibits predate the claimant's detail to the position, the exhibits are irrelevant and immaterial. Also the agency has never disputed the fact that a GS-15 chief's position had existed. Rather the agency in its denial of Ms. Mansfield's claim stated that the GS-15 position was abolished on May 10, 1974, and that Ms. Mansfield was detailed to a position which was not classified at GS-15 until March 12, 1976. In this regard Ms. Mansfield's "Exhibit 3," the SF 52 which documents her detail effective January 20, 1975, shows that she was detailed to the position of "Acting Chief, Division of Social Services Research and Demonstrations, GS-14." Ms. Mansfield has pointed out that the position title was crossed out and the handwritten notation "Duties not classified" inserted. However, this change in no way shows that she was detailed to a GS-15 position. In addition, since the notation "Duties yet to be described. See attachment" was made in the "Remarks" block of the SF 50, it reasonably appears that the position was not classified at GS-15 when Ms. Mansfield was initially detailed. In this connection we point out that when an employee has been detailed to a position which had been classified downward, he is not entitled to higher pay until the position has been reclassified and reestablished at its earlier higher grade. Matter of Katherine Crump-Wiesner, B-190335, February 14, 1978.

Thus, as the record indicates that the position filled by Ms. Mansfield was not classified at the GS-15 level until March 12, 1976, that date is when the period commenced for determining

whether Ms. Mansfield had the requisite 120 days service for a retroactive promotion. Since her detail ended on June 6, 1976, she served only 87 days in the higher grade and is not entitled to a temporary promotion and backpay.

Ms. Mansfield likewise is not entitled to a temporary promotion and backpay in connection with her second detail. In her own memorandum of June 14, 1977, Ms. Mansfield sets forth that on July 1, 1976, she was detailed to a new position, Social Research Utilization Officer, which was not officially classified until November 15, 1976. Ms. Mansfield's memorandum is entirely consistent with HEW's factual findings set forth in its memorandum of April 6, 1978. Thus, as Ms. Mansfield only served in an officially higher classified position from November 15, 1976 until the end of this detail on December 6, 1976, she did not serve the 120 day period necessary for a temporary retroactive promotion with backpay.

Finally, in her appeal to this Office, the claimant makes certain allegations relating to improper personnel practices by previous employees of the agency's personnel officer. Ms. Mansfield requests that we consider this in our decision and also indicate what recourse, if any, is available to an allegedly aggrieved employee. Having reviewed all of Ms. Mansfield's submissions, we believe that her complaint concerns the question of whether the temporary positions she filled were improperly classified or unreasonably delayed in being classified. In the Matter of J. E. Skowronski, B-190442, April 13, 1978, we pointed out that complaints regarding the classification of a position are generally for resolution by the employee's agency and the Office of Personnel Management. See 5 U.S.C. §5101 et. seq. (1970) and title 5, part 511, Code of Federal Regulations (1975). This Office has no authority to settle claims on any basis other than agency or Civil Service Commission (now Office of Personnel Management) classification. Matter of William A. Campbell, B-183103, June 2, 1975. Also, we are precluded from awarding backpay for period in which employee served in a position which was erroneously classified. United States v. Testan, 424 U.S. 392 (1976); Matter of George A. Jackson, B-188617, September 20, 1977.

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Accordingly, the disallowance of Ms. Mansfield's claim is affirmed.

R. F. K. 11/14/61
Deputy Comptroller General
of the United States